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6 JUNIOR WILLIAMS,

7 Plaintiff,

8 No. C 02-02745 JSW

9 v.

10 DALY CITY POLICE OFFICERS
11 C. AUSTRIA and M. PRICE,

12 Defendants.

13
14 **NOTICE OF TENTATIVE
15 RULING AND QUESTIONS**

16 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD, PLEASE TAKE
17 NOTICE OF THE FOLLOWING **TENTATIVE RULING AND QUESTIONS** FOR THE
18 HEARING SCHEDULED ON MARCH 10, 2006 AT 9:00 A.M.:

19 The Court has reviewed the parties' papers and, thus, does not wish to hear the parties
20 reargue matters addressed in those pleadings. If the parties intend to rely on authorities not
21 cited in their briefs, they are ORDERED to notify the Court and opposing counsel of these
22 authorities reasonably in advance of the hearing and to make copies available at the hearing. If
23 the parties submit such additional authorities, they are ORDERED to submit the citations to the
24 authorities only, without argument or additional briefing. *See* N.D. Civ. L.R. 7-3(d). The
25 parties will be given the opportunity at oral argument to explain their reliance on such authority.

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27 The Court tentatively DENIES Defendants' motion for summary judgment and
28 tentatively DENIES Defendants' motion to strike.

The parties shall have 25 minutes each to address the following questions:

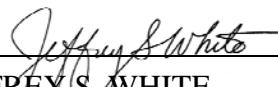
United States District Court

For the Northern District of California

1. On December 9, 2003, this Court issued an order denying Defendants' motion
2. for summary judgment based on qualified immunity. The facts uncovered
3. through discovery do not appear to change significantly the factual allegations in
4. Plaintiff's amended complaint. On what basis should the Court reconsider its
5. denial of the defense of qualified immunity based on the facts now presented?
6. Defendants contend that Plaintiff attempts to state a claim under 42 U.S.C.
7. § 1981. (Motion at 6-7.) The amended complaint filed on July 19, 2004 does
8. not contain such a claim. Does Plaintiff intend to state a claim under 42 U.S.C.
9. § 1981 or only a claim under 42 U.S.C. § 1983?
10. Defendants contend that there is no fact in the record to demonstrate that the
11. officers acted with racial animus. (Motion at 7.) Does the factual contention by
12. Plaintiff that he was called racially derogatory names during the course of his
13. arrest create a dispute of fact as to whether the officers acted with racial animus?
14. (See Plaintiff's Deposition at 23 (attached as Exhibit E to Opposition).)
15. 4. What evidence, if any, has Plaintiff amassed to indicate that the alleged use of
16. force by the individual officers is representative of a repeated course of conduct
17. by Daly City police officers tantamount to a custom or practice? On what
18. ground do Defendants contend that Plaintiff may not maintain a *Monell* cause of
19. action where the officers have been sued in their official capacities? (See, e.g.,
20. *Monell v. New York Dep't of Social Servs.*, 436 U.S. 658, 690 n.55 (1978);
21. *Kentucky v. Graham*, 473 U.S. 159, 165-66 (1985).)
22. 5. If the Court finds that the officers are not entitled to qualified immunity for the
23. 42 U.S.C. § 1983 claims, on what basis do Defendants maintain that the
24. California Government Code affords them discretionary immunity for the
25. alleged use of unreasonable force in making an arrest? (See, e.g., *Robinson v.*
26. *Solano County*, 278 F.3d 1007, 1016 (9th Cir. 2002); *Scruggs v. Haynes*, 252
27. Cal. App. 2d 256, 265 (1967).)
28. 6. Would any possible prejudice to Defendants of the late disclosure of Frank
29. Saunders be remedied by a brief and limited extension of time for the sole
30. purpose of deposing Mr. Saunders? Have the documents relied upon by
31. Defendants' experts been produced to Plaintiff?
32. 7. Is there anything further the parties wish to address?

IT IS SO ORDERED.

Dated: March 9, 2006



 JEFFREY S. WHITE
 UNITED STATES DISTRICT JUDGE